

BEFORE THE HEARING PANEL OF THE  
FLORIDA JUDICIAL QUALIFICATIONS COMMISSION  
STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE,  
PAUL M. HAWKES, JQC NO. 10-491

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SC11-950

**NOTICE OF ADDITIONAL SUPPLEMENTAL AUTHORITY PROVIDING  
THAT DISQUALIFICATION OF COUNSEL IS APPROPRIATE TO AVOID  
APPEARANCE OF IMPROPRIETY**

1. **Cox v. American Cast Iron Pipe Co.**, 847 F.2d 725 (11th Cir. 1988)

“Canon 9 of the ethical rules states that ‘[a] lawyer should avoid even the appearance of professional impropriety.’ *Under its strictures lawyers may be disqualified if the court finds (1) some specifically identifiable appearance of improper conduct and (2) that “the likelihood of public suspicion or obloquy outweighs the social interest which will be served by a lawyer’s continued participation in a particular case.” Woods*, 537 F.2d at 813 & n. 12. Canon 9 is designed not to protect the former client but to preserve the public’s confidence in the judicial system and the legal profession. *See id.* at 813. Because the benefits of the rule extend to the public at large, a party to litigation cannot waive its violation. *See Hobson*, 672 F.2d at 829.”

847 F.2d at 729, quoting *Woods v. Covington County Bank*, 537 F.2d 804, 810 (5th Cir.1976)3; citing *United States v. Hobson*, 672 F.2d 825, 827 (11th Cir.), cert. denied, 459 U.S. 906, 103 S.Ct. 208, 74 L.Ed.2d 166 (1982).

“As discussed earlier, parties to litigation cannot waive violations of Canon 9. Rather, in every case where a specifically identifiable appearance of impropriety exists the court must weigh the likelihood of public suspicion against the social interests in obtaining counsel of one’s choice. *See Woods*, 537 F.2d at 813 & n. 12; *see also United States v. Kitchin*, 592 F.2d 900, 903 (5th Cir.), cert. denied, 444 U.S. 843, 100 S.Ct. 86, 62 L.Ed.2d 56 (1979).”

847 F.2d at 731.

2. **Lee v. Florida Dept. of Ins.**, 586 So.2d 1185, 1189 (Fla. 1st DCA 1991).

Appeals court quashed an order of Administrative Law Judge which denied a motion to disqualify counsel for a conflict of interest. Movant invoked appeals court's jurisdiction to review the non-final order denying motion to disqualify. In quashing the order and directing disqualification, the First DCA held that "Disqualification is required to avoid the appearance of impropriety."

3. **Brent v. Smathers**, 529 So.2d 1267 (Fla. 3d DCA 1988).

Appeals court quashed order of trial court refusing to disqualify attorney and directed that the attorney be disqualified from continuing in the case. Court acknowledged the principle that in Florida appearance of impropriety is proper basis for disqualification of counsel.

"For the reason that there is clearly an appearance of impropriety—in the form of an undermining of the loyalty and trust upon which an attorney-client relationship is based—the respondent law firm is disqualified."

529 So 2d at 1269.

4. **Herrera-Shorthouse v. La Cubana Bail Bonds, Inc.**, 1999 WL 33266031 (S.D. Fla. 1999).

While Florida law is clear that disqualification of an attorney is required to avoid the appearance of impropriety, this Court finds that no such appearance would result in this case. *See Lee v. Florida Dept. of Ins.*, 586 So.2d 1185, 1189 (Fla. 1st DCA 1991); *Brent v. Smathers*, 529 So.2d 1267 (Fla. 3d DCA 1988).

1999 WL 33266031 \*5.

Respectfully submitted,

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Certificate of Service

I certify that the above Supplemental Memorandum of Law in Support of Motions to Dismiss was sent via U.S. Mail on July 19, 2011 to the following:

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